



**DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF RESOLUTION MANAGEMENT
LYONS, NEW JERSEY 07939**

EEO COUNSELOR'S REPORT

CASE NUMBER: 200G-0525-2002104727

COUNSELOR'S NAME: Jacqueline M. Vélez

Name of Aggrieved Employee:	Rajendra Badgaiyan, M.D.
Home Address:	122 A Sycamore Street, Somerville, MA 02145
Home Telephone Number:	617-623-1140
Business Address:	940 Belmont Street, Brockton MA 02301
Business Telephone Number:	508-583-4500 x2456
Employee <input checked="" type="checkbox"/>]	Former Employee <input type="checkbox"/>] Job Applicant <input type="checkbox"/>]
Position Title/Series/Grade:	
Title 5 <input type="checkbox"/>] Title 38 <input checked="" type="checkbox"/>] Hybrid T38 <input type="checkbox"/>] -Full Time <input checked="" type="checkbox"/>] Part Time <input type="checkbox"/>]	
Temporary <input type="checkbox"/>] Probationary <input type="checkbox"/>] Career Conditional <input type="checkbox"/>] Career <input type="checkbox"/>] Term <input type="checkbox"/>]	
Name of Facility:	VABHCS - Brockton Facility
Service/Section:	Psychiatry
Address of Facility:	940 Belmont Street, Brockton MA 02301
Facility Telephone Number:	508-583-4500 x2456
Name of Representative:	Attorney: Yes <input type="checkbox"/>] No <input type="checkbox"/>]
Representative's Address:	
Representative's Telephone:	

NOTIFICATION OF PROCEDURAL RIGHTS

Initial Contact (Date):	08/29/2002			
Initial Interview (Date):	08/29/2002			
Rights, Waiver & Claim Letter:	Mailed (FedEx):	08/29/2002	Rec'd:	08/30/2002
Agreed to Waive Anonymity:	YES <input checked="" type="checkbox"/>] NO <input type="checkbox"/>]			
Notification to Facility:	Mailed	09/11/2002		
ADR Offered:	YES <input checked="" type="checkbox"/>] NO <input type="checkbox"/>]	Date:	08/29/2002	
ADR Agreed To:	YES <input type="checkbox"/>] NO <input checked="" type="checkbox"/>]	Date:	08/29/2002	
ADR Agreement:	Mailed/Faxed:		Rec'd:	
Extension (Non-ADR):	Mailed/Faxed:		Rec'd:	
Release of Medical Information:	Mailed/Faxed:		Rec'd:	
Settlement Agreement:	YES <input type="checkbox"/>] NO <input type="checkbox"/>]	Date:		
Notice of Right to File:	Mailed/Faxed:	09/23/2002	Rec'd:	09/24/2002

VA049

Revised 05/29/02

Name of Aggrieved Employee: Ajendra D. Badgaiyan

Name of Facility: VABHQS – Brockton Facility

Date of Initial Contact: August 29, 2002

BASIS(ES)	CLAIM(S)	EVIDENCE AND DATE(S) OF OCCURRENCE	RESOLUTION(S) SOUGHT
National Origin (India)	Denial of Promotion	The aggrieved party received a letter dated May 28, 2002 that stated that he would not be promoted to PGY – IV in October 2002.	<ol style="list-style-type: none"> 1. Rescind letter dated May 28, 2002. 2. Remove on all adverse information in his personnel file. 3. Monetary compensation for physical and mental stress.

- On August 29, 2002 the aggrieved party contacted the Office of Resolution Management and spoke with this counselor who completed an initial referral form and initial interview.
- The Notice of Rights and Responsibilities (NORR) was sent to the aggrieved party via overnight mail (FedEx) on August 29, 2002 and was confirmed as received by the aggrieved party on August 30, 2002.
- Telephonic interviews were conducted with the aggrieved party on August 30, September 4, 5 and 9, 2002 at his home phone number to advise him that fact-finding had not occurred because he had not returned his NORR. This counselor also informed the aggrieved party that during the informal process, timeframes are of the utmost importance noting informal counseling has a 30-day timeframe starting at the date of initial contact (August 29, 2002).
- On September 11, 2002 this counselor received a signed copy of the aggrieved party's NORR in which he waived his right to anonymity.
- On September 11, September 12, September 13, 2002 and September 16, 2002 this counselor attempted to contact Ms. Sharon O'Leary, EEO Program Manager at her work phone number to request copy of the aggrieved party's EEO training records and to discuss the aggrieved party's claim in order to seek resolution at the informal level, but was unable to reach her.
- On September 16, 2002 this counselor attempted to contact Human Resources Management Specialist Officials and Grace Mushrush, M.D., Director of Residency Training but was unable to reach them.
- Telephonic interviews were conducted with the Responsible Management Official, Dr. Grace Mushrush on September 17 and September 19, 2002.
- Telephonic interviews were conducted with Sharon O'Leary, EEO Program Manager on September 18 and September 23, 2002.

Below is a description of the claim(s) and resolution(s) as presented by the Aggrieved Employee:

Name of Aggrieved Employee: Jendra D. Badgaiyan

Name of Facility: VABHCS - Brockton Facility

Date of Initial Contact: August 29, 2002

Claim #1:	Denial of Promotion
Evidence and Date(s) of Occurrence:	The aggrieved party received a letter dated May 28, 2002 that stated he was not recommended for a promotion to PGY - IV on October 2002.
Basis(es):	National Origin (India)
Responding Management Official(s):	
Mixed Case Issue: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
MSPB Filed: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Union Grievance Filed: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Brief Description of Claim:

The aggrieved employee contacted the Office of Resolution Management on August 29, 2002 because he believed he was discriminated against based on his national origin (India) when he received a letter dated May 28, 2002 with the Psychiatry Residency Training Program Committee recommendations of not promoting him to his next level (PSY-14) in October 2002. When asked by this counselor why he felt he was discriminated based on his nationality, the aggrieved party said that he was the only Psychiatry Resident not promoted to the next level.

The aggrieved party's claim was beyond the 45-day requirement for contacting an EEO Counselor. This counselor explained to the aggrieved party his rights and responsibilities and the timeframe for contacting EEO Officials. The aggrieved party said that the reason for waiting before contacting an EEO Official was that he was too depressed and too emotional for him to address his claim in a timely fashion. When asked by this counselor if he attended EEO Training, the aggrieved party stated that he does not remember if he attended the training.

Counselor Notes:

This Counselor contacted Ms. Sharon O'Leary, EEO Specialist for the VACHCS on September 18 and September 23, 2002 to request a copy of the aggrieved party's EEO training records. This Counselor also contacted Human Resources Management Officials on September 25, 2002 to request a copy of the aggrieved party's EEO training record. To date this counselor has not received the aggrieved party's training records.

Documents Suggested for Review:**By the aggrieved party:**

- Letter addressed to this counselor dated September 4, 2002.
- Questionnaire dated September 4, 2002.
- Psychiatry Residency Training Program Committee recommendation letter dated May 28, 2002.

By the responsible management officials:

- Report of Contact dated September 13, 2002
- Report of Contact dated September 10, 2002
- E-mail dated August 27, 2002
- E-mail dated July 8, 2002
- E-mail dated July 2, 2002

Name of Aggrieved Employee: Jendra D. Badgaiyan

Name of Facility: VABHCS – Brockton Facility

Date of Initial Contact: August 29, 2002

- E-mail dated June 30, 2002
- E-mail dated June 24, 2002
- Letter dated May 28, 2002
- E-mail dated May 17, 2002
- April 26, 2002 Minutes for the Psychiatry Residency Training committee dated May 5, 2002.
- Letter dated May 8, 2002
- Report of contact dated April 26, 2002
- Letter of Complaint dated April 3, 2002
- E-mail dated April 1, 2002
- Report of contact, undated
- E-mail dated March 4, 2002
- Aggrieved party's preceptor evaluation of Trainee from July 2001 to August 2001.
- Aggrieved party's preceptor evaluation of Trainee for March 2001.

Witness(es) Suggested for Interview: None

Resolution Sought: The aggrieved party requested the following:

- Withdraw Letter dated May 28, 2002.
- Remove all adverse information in his personnel record.
- Provide monetary compensation for physical and mental stress resulting in the increase of his blood pressure to a life threatening level.

Responding Management Official Contacted: Grace Mushrush, M.D., Director, Residency Program, Psychiatry, 508-583-4500 x2456.

Response to Claim #1:

Dr. Mushrush was provided information related to the EEO Discrimination Complaint process and the role of the EEO Counselor. She was advised of her right to representation. She stated she did not feel a representative was necessary during our discussion. Dr. Mushrush was informed of the aggrieved party's allegation of discrimination and resolution sought.

Dr. Mushrush said that the aggrieved party's anniversary date for promotion would be in October, therefore he could not be promoted with the other residents last July 2002. Dr. Mushrush also said that for a resident to be promoted to the next level he/she would need to meet the requirements for the promotion and the aggrieved party did not meet these requirements.

Dr. Mushrush explained to this counselor that the Residency Training Program Committee held a meeting in April 26, 2002 to discuss the residents' promotion to their next level. In the meeting the committee members also reviewed the aggrieved party's training experience and performance. She said that it was noted that there were numerous complaints concerning the aggrieved party's poor attitude and lack of cooperation in addition to the aggrieved party's need to complete additional training, which she noted would be extended until December 2002. She said that the Committee would meet sometime in December, 2002 to evaluate the

Name of Aggrieved Employee: Ajendra D. Badgaiyan
Name of Facility: VABHCS - Brockton Facility
Date of Initial Contact: August 29, 2002

aggrieved party's performance.

Dr. Mushrush stated that the aggrieved party's not being promoted to a PGY-IV was not based on his nationality. She said that based on the evidence presented to the Committee members the aggrieved party could not be considered for a promotion in July, 2002 because he did not met the time in grade requirements. She also stated he was not recommended for a promotion in October, 2002 because he needed to complete additional training, which was explained to the aggrieved party in the letter given to him on May 28, 2002.

Witness(es) suggested by Responding Management Official to Interview: None

Response to Resolution Sought by Aggrieved Employee: The RMO said that based on the evidence file the Psychiatry Residency Training Program Committee could not promote the aggrieved party to his next level (PGY-IV). The aggrieved party's resolution was not achievable at this stage.

Proposed Alternative Resolution: None

Results of Witness Interviews: N/A

Summary of Resolution Efforts: None

FINAL INTERVIEW

On September 23, 2002, the results of resolution efforts and the following claim were discussed with the Aggrieved Employee:

Claim #1: Whether the aggrieved party was discriminated against based on his nationality (India) when he received a Letter on May 28, 2002 from the Psychiatry Residency Training Program Committee that recommended his promotion be held until the committee met in December, 2002 to re-evaluate his work performance.

The Aggrieved Employee was informed that the claim listed above was the only claim addressed during the informal EEO counseling and, if a formal EEO Complaint of Discrimination is filed, claims not discussed with me may not be accepted for formal complaint processing.

The Notice of Right to File a Discrimination Complaint and Form 4939 were sent by overnight mail (FedEx) on September 23, 2002 and was received by the aggrieved employee on September 24, 2002


EEO Counselor

10/4/02
Date